



Consumer Federation of America

Marlene H. Dortch
Secretary, Federal Communications Commission
4445 12th Street, SW
Washington, DC 20554

April 18, 2003

Re: Notice of *Ex Parte* presentation in Docket No. 02-277

Dear Ms. Dortch:

Pursuant to Section 1.1206(b)(2) of the Commission's rules, this letter describes a meeting held on March 21, 2003, between Dr. Mark Cooper (Director of Research, Consumer Federation of America or CFA) and Simon Wilkie, Chief Economist, Federal Communications Commission.

Citing the detailed materials submitted by CFA and CU in Docket 02-277, Cooper and Murray described principles of market structure analysis for media based on economic fundamentals that recognize the unique importance of civic discourse. A summary of the principles is attached. Alternative approaches to describing media market structures in quantitative terms were discussed. The Department of Justice Merger Guidelines (also attached) were discussed, particularly the threshold of unconcentrated markets as a critical level for civic discourse. He also stressed the importance of using market shares as the basis for market structure analysis, rather than a simple voice count approach that did not take into account the reach and impact of voices, as measured by their market audiences and market shares.

Sincerely,

Mark Cooper
Director of Research
Consumer Federation of America

Attachment

PRINCIPLES OF MARKET STRUCTURE ANALYSIS FOR MEDIA BASED ON ECONOMIC FUNDAMENTALS AND THE UNIQUE IMPORTANCE OF CIVIC DISCOURSE

The Federal Communications Commission should not tolerate or encourage concentrated media markets.

The standard definition of unconcentrated markets, well grounded in economic theory and practice, is a market with the equivalent of 10 or more, equal-sized producers. Civic discourse demands even more vigilance. The purpose of the antitrust laws is to prevent the acquisition and abuse of market power. The bold aspiration for the First Amendment is broader and more aggressive – the widest possible dissemination of information for diverse and antagonistic sources.

The analysis of news and information, as opposed to entertainment or ad markets, should be the primary basis of market structure analysis.

Many broadcast stations do not provide news whatsoever. Radio has all but abandoned news and cable TV channels never did provide news. As a consequence, news media markets are much more concentrated than broadcast and video TV markets.

Market structure analysis should recognize the function, reach and impact of different media products.

Television and newspapers dominate the news media market. Television provides the announcement function. Newspapers provide in-depth coverage. Other sources of news are dwarfed by the two dominant sources. (According to surveys, radio and Internet account for less than 20% for individuals.) The FCC should focus its analysis on TV and newspapers as the dominant voices in civic discourse, and adjust for the lesser voices.

While the overall media market should not be allowed to become concentrated, individual broadcast sub-markets (TV, newspaper, radio) should not be allowed to become highly concentrated.

Excessive market concentration in electronic media cannot be compensated for by cross media competition. Each product market should be no worse than moderately concentrated.

A diminimus exception for cross-ownership should be allowed to promote civic discourse.

Relatively small newspaper or television outlets (less than 5 percent market share) should be exempted from the above rules. To the extent that larger media outlets seek to

obtain cross technology partners, this should be allowed as it can increase the availability of important voices.

Details of the index can be developed separately from the adoption of the overall approach.

The principles of a market structure approach outlined above can be adopted while comment on details of the measurement can be sought. The following presents a generic approach.

$$[(\text{BROADCAST VOICES} + \text{NEWSPAPER VOICES}) / \text{Adjusted for lesser voices}] + \text{Cable adjustment}$$

As a first approximation, we might argue for broadcast HHIs, converted to equal-sized voice equivalents [e.g. an HHI of 2000 converts to the equivalent of 5 equal-sized voice (10,000/2000)]. Newspaper HHIs would be similarly converted to equal-sized voice equivalents (e.g. an HHI of 3333 converts to 3 equal sized voice equivalents). The Commission should examine the difference between entertainment HHIs and news HHIs.

The number of voices should be inflated to take account of the lesser voices available in radio, the Internet, and other sources. As a first approximation, the Commission could assume the major TV and newspaper voices represent 80 percent of the market (based on the Nielsen study radio is the primary source of news for 10 percent of the people, the Internet and other are 10 percent). [For example, if TV has 5 voice equivalents and newspapers represent 3, the total of 8 would be divided by .8 yield a total of 10 ($8/.8=10$)]

In the above analysis, ownership of multiple outlets must be taken into account. For example, the television HHI would attribute viewers of both stations in a duopoly to the parent firm. Similarly, where a newspaper is cross-owned with a television station, the total voice count would be reduced by 1.

Cross-ownership of radio stations by newspapers and TV broadcasters should also be taken into account by increasing the adjustment factor. In the above example, the adjustment was .8, based on a .1 for radio and a .1 for internet and other. If the if the radio holdings of broadcasters and newspapers have a market share of 40 percent of the radio market, then the adjustment for radio would be decreased to .6. The voice count would be 9.5 ($8/.84=9.52$).

The Commission has considered cable TV as a single voice. To the extent the Commission develops a methodology based on all viewing (as opposed to broadcast shares), a cable adjustment would not be necessary. [In the example above, the total would be 10 plus 1 or 11] One merger could be allowed, still keeping the number of voices at 10 or more.